Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (S/B) No. 14 of 2004

Ram Chandra Bhardwaj
S/o late Sri Kali Charan Sharma,
House No.7 Type IV Officer Colony,
Narsingh Bari, Almora
District Almora.

..... Petitioner

Versus

1. State of Uttaranchal through Secretary Tourism, Dehradun,

2. Secretary tourism Department, Sachivalaya Bhawan, Dehradun,

3. Chief Executive Officer, Uttaranchal Tourism Development Board, Dehradun.

..... Respondents

Sri D.S.Patni, learned counsel for the petitioner,
Sri K.P.Upadhyay, learned Standing counsel for the respondents.

Dated: July 11, 2006.

Hon'ble P.C.Verma, J.
Hon'ble B.S.Verma,J.

By means of this writ petition, the petitioner has sought for issue a writ, order or direction of this Court in the nature of mandamus commanding the respondents to promote the petitioner to the post of Deputy Director (Tourism) with effect form the date of recommendation of the D.P.C. held on 29.01.2004, which is to be given effect to.

2. The petitioner claims to be eligible to be promoted to the post of Deputy Director (Tourism) and falls within the zone of consideration for the said

promotion. According to the petitioner, Departmental promotion Committee **(DPC)** was scheduled to be held on 21.01.2004. The writ petition was filed on 10.02.2004 and the DPC was held on 29.01.2004, when the selected candidates, though junior to the petitioner, might have been given promotion, prior to the filing of the writ petition, selected by the DPC.

3. The petitioner was appointed as Officer on Special Duty (Adventure Tourism), vide Government Notification dated 05.01.1987 in the pay scale of Rs. 1000-50-1300-E.B.-60-1600-E.B.-60-1900/-. After the revision of the pay scale, the petitioner was given the pay scale of Rs.8,550-14,600/-. The learned counsel for the petitioner submitted that after enforcement of Act No. 12 of 2001, dated 28.11.2001 passed by Uttaranchal legislature known as Uttaranchal Tourism Development Board Act, 2001 and by virtue of Section 11 (2) the petitioner stood merged in the Board and after merger in the Board the petitioner shall be paid the same pay scale as he was transferred with the budget in the same pay scale. The salary of the petitioner was paid from the budget of the Department earlier and now from the fund of the Board.

4. The learned counsel for the petitioner invited our attention to Annexure R.A.-4 filed with the rejoinder affidavit which is re-structuring of the post with the pay scale in Class I & II Officers who were merged in the Board. The petitioner is holding the post of Officer on Special Duty (Adventure Tourism) in the pay scale of Rs. 8,550-14,600/-. From perusal of Annexure RA-4, it is evident that at serial No.8 post of Officer on Special Duty (Adventure Tourism) has been re-structured in the pay

scale of 10,000-15,200/-. There is no post of O.S.D. in the pay scale of Rs. 8,550-14,600/- mentioned in this Government Order. Therefore, the contention of the learned Standing Counsel for the State that the petitioner was holding ex cadre post is established.

5. Learned counsel for the petitioner submits that despite sanction of the pay scale of Rs. 10,000-15,200/- the petitioner is not being paid salary. Since the petitioner has been given the promotional pay scale as stated in the counter affidavit, the salary of the petitioner be paid form the date of sanction of the pay scale.

6. In view of the discussion in the preceding paragrah, the petition is allowed in part only to the extent that the petitioner shall be paid salary in the pay scale of Rs. 10,000-15,200/-. Since the petitioner was holding an ex cadre post, therefore he is not entitle for promotion as prayed by him. The petition is dismissed for this relief. No order as to costs.

(B.S.Verma,J.) **(P.C,Verma,J.)**
11.07.2006 **11.07.2006**

P.Singh